STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 2, 2005
v	No. 253542 Saginaw Circuit Court
REGINALD GLAMONT STEVENSON, Defendant-Appellant.	LC No. 02-022081-FH

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of receiving or concealing stolen property valued at more than $1000 but less than $20,000, MCL 750.535(3)(a), and was sentenced as a fourth felony offender, MCL 769.12, to forty-six months to twenty years in prison. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant began to testify at trial about plea negotiations, to which the prosecutor objected. Out of the presence of the jury, the prosecutor read part of the statements made by defendant during negotiations (hereafter, the "proffer statements"), although they were not made part of the record at trial. The prosecutor believed that the proffer statements allowed him to impeach defendant and offered to play the entire tape of the negotiations for the jury. The defense did not accept the offer but rather requested that defendant be allowed to clarify his testimony about part of the proffer statements.

The court ruled that, under MRE 410, anything other than statements made by defendant himself were inadmissible. The court instructed the jury in pertinent part as follows:

> Ladies and Gentlemen of the jury, after reviewing Rule 410 of the Rules of Evidence, I am instructing you that any statements that arose out of the course of plea discussions or negotiations whether they're statements of the prosecutor, statements of allegedly other people, whether a lie detector test was offered or not offered, all of that I'm going to instruct you to disregard because it's not admissible for the purpose of determining guilt or innocence and, therefore, is irrelevant. The only thing that I am admitting in is any statements that were proffered by the defendant, which is kind of an exception to this, for the purposes of impeachment only.

Detective Berg was recalled as a rebuttal witness and attempted to play parts of the tape of the proffer statements. The jury was unable to hear, however, so defense counsel offered a transcript of the statements. Berg then read to the jury that defendant told the police that he had fabricated that part of his earlier statement about a now-deceased black man who had tried to sell him the car. He also read that defendant stated that he paid a guy $1500 to switch interiors in the two cars. This was contrary to defendant's trial testimony in which he claimed that the car's owner sold him the vehicle but that the owner later claimed it had been stolen in an apparent attempt to defraud his insurance company. Defendant sought to admit his proffer statements at trial to establish that he cooperated with the police in attempting to expose the car owner's fraudulent conduct.

Defendant's sole issue on appeal is whether the trial court erred in ruling that his proffer statements could be used for impeachment purposes only.

The decision to admit evidence is reviewed for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). However, when the issue involves the proper interpretation or application of a rule of evidence, this Court reviews the trial court's decision de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999); *People v Ackerman*, 257 Mich App 434, 442; 669 NW2d 818 (2003).

The rule of evidence at issue here, MRE 410, provides in part:

> Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
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> * * *
>
> (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

In *People v Stevens*, 461 Mich 655; 610 NW2d 881 (2000), our Supreme Court dealt with the admissibility of statements made during plea negotiations when the defendant has waived his rights under MRE 410. The Court held that a defendant can waive the right not to have his statements during plea negotiation statements used against him. *Id.* at 666. If such a waiver exists, the prosecution may use a defendant's statements either in its case in chief or for impeachment purposes. *Id.* at 666, 670.

We initially note that defendant's proffer statement and the waiver he signed were not made part of the lower court record. "This Court's review is generally limited to the record of the trial court, and it will generally allow no enlargement of the record on appeal." *People v Warren*, 228 Mich App 336, 356; 578 NW2d 692 (1998), rev'd in part, aff'd in part, 462 Mich 415; 615 NW2d 691 (2000). For this reason alone, we can affirm defendant's conviction.

However, even if the record were complete, we find that no error occurred. In the waiver defendant agreed that the statements he would be making during the plea could be used by the prosecutor for impeachment purposes at trial. Defendant's waiver was entirely permissible

under *Stevens*. However, defendant argues that under *Stevens*, every statement made by him during negotiations should have been admitted since the prosecutor impeached him using part of the proffer statements.[1] However, the *Stevens* Court never held that all statements, whether inadmissible under another rule of evidence, *must* be admitted if a waiver exists.

In the concluding paragraph of the opinion, the *Stevens* Court held that "[t]he defendant's statements [during plea negotiations] . . . are not rendered inadmissible by MRE 410, and, *if otherwise admissible*, can be introduced in the prosecutor's case in chief. *Stevens*, *supra* at 670 (emphasis added).

The question of relevance is an important one, and one that the trial court also considered. MRE 401 provides: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Based on what is known about the proffer statements or the negotiations, the trial court correctly ruled that defendant's testimony was irrelevant. On redirect examination, counsel asked defendant, "What was the purpose of the proffered statement?" Defendant answered with statements that were allegedly made by both the police and the prosecutor regarding the alleged plea bargain. In its discussion on the record, the court not only considered "discussions of resolution," but also asked "is that relevant?" It appears that defendant's sole concern at both the trial level and on appeal is whether he was improperly prohibited from testifying about the attempts to contact the car's owner by telephone during his efforts to cooperate with the police. The court properly found that, whether or not that actually occurred, it was not relevant.

Defendant's claim that he was "precluded . . . from developing the facts surrounding the plea negotiations in a way that would have supported his defense," presupposes that a defense to the crime of receiving or concealing stolen property is admitting to conspiracy to commit insurance fraud with the victim. If that was in fact his defense, defendant did testify without objection that the owner gave him the car and that it was not stolen when he received it. Witnesses also testified on defendant's behalf that the car was in his possession before the owner claimed it was stolen. Additionally, the car keys, identified as such by the owner, that were found in defendant's possession were admitted into evidence. The fact that the police and defendant attempted to make phone calls to the car's owner does not seem to add much to his defense that the owner gave him the car and that he and the owner were involved in insurance fraud.[2]

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[1]It is important to note that defendant was offered the opportunity to have the jury listen to the entire tape. Defendant failed to take advantage of that opportunity. At one point during a discussion between the trial judge and the attorneys, defendant himself spoke up and said, "So we don't have to play the tape."

[2] Furthermore, the evidentiary rules concerning admission of hearsay statements would have been violated if defendant had been allowed to testify about what others said during the plea negotiations. MRE 801(c) defines hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the

(continued…)

The trial court correctly ruled that the evidence contained in the proffer statement that defendant sought to admit was inadmissible.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

(…continued)

matter asserted." Defendant tried to testify that Detective Berg told him (1) that he believed defendant was telling the truth, and (2) that the prosecutor agreed to dismiss the charges against defendant. These statements were clear inadmissible hearsay under the rules of evidence.